

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Petition of WorldCom, Inc. Pursuant to Section 252(e)(5))
of the Communications Act for Expedited Preemption)
of the Jurisdiction of the Virginia State Corporation)
Commission Regarding Interconnection Disputes with)
Verizon Virginia Inc., and for Expedited Arbitration)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 00-218

In the Matter of)
Petition of Cox Virginia Telecom, Inc., Pursuant to)
Section 252(e)(5) of the Communications Act for)
Preemption of the Jurisdiction of the Virginia State)
Corporation Commission Regarding)
Interconnection Disputes with Verizon Virginia Inc.)
and for Arbitration)

CC Docket No. 00-249

In the Matter of)
Petition of AT&T Communications of Virginia Inc.,)
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Virginia Corporation)
Commission Regarding Interconnection Disputes)
With Verizon Virginia Inc.)

CC Docket No. 00-2

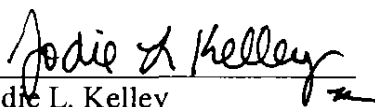
**REQUEST FOR EXTENSION OF PERIOD FOR FILING
AN OPPOSITION TO AN APPLICATION FOR REVIEW**

WorldCom, Inc. ("WorldCom") respectfully requests that the deadline for filing an opposition to the Application for Review of the Wireline Competition Bureau's October 8, 2002 Order Approving the Interconnection Agreements filed by Verizon in the above-captioned docket be extended from November 22, 2002 to December 17, 2002. This Commission's rules ordinarily establish a fifteen day period for filing oppositions to applications for review. *See* 47 C.F.R. § 1.115(d). WorldCom did not submit an opposition within the fifteen-day period because Verizon's Application For Review simply incorporates and summarizes the Reconsideration

Petition, and WorldCom set forth the grounds for rejecting those arguments in its Opposition to Verizon's Reconsideration Petition. *See* Opposition Of WorldCom, Inc. To Verizon's Petition For Clarification And Reconsideration Of July 17, 2002 Memorandum Opinion And Order ("Reconsideration Opposition") (filed Sept. 10, 2002). However, WorldCom has since learned that both AT&T and Cox tiled oppositions to the Application for Review. In the interest of having a complete record, and to protect its rights to appellate review, WorldCom respectfully requests leave to file the enclosed Opposition To Verizon's Application For Review. Granting WorldCom an extension of the filing deadline would not prejudice the parties or unduly delay Bureau or Commission review of the pending petitions because WorldCom's Opposition to the Application for Review incorporates the arguments presented in WorldCom's Reconsideration Opposition, and presents no new legal arguments or evidence. It would therefore be appropriate to allow WorldCom to submit the enclosed Opposition at this time.

Respectfully submitted,

Lisa B. Smith
Kecia Boney Lewis
Kimberly Wild
WorldCom, Inc.
1 133 19th Street, N.W.
Washington, D.C. 20036


Jodie L. Kelley
Robin M. Menweather
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005

Counsel for WorldCom, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Request for Extension of Period for Filing an Opposition to an Application for Review were delivered this 17th day of December, 2002, by email and in the manner indicated below, to:

Karen Zacharia
David Hall
Verizon-Virginia, Inc.
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201
****By Federal Express***

Mark Keffer
AT&T Corporation
3033 Chain Bridge Road
Oakton, VA 22185
****By First Class Mail***

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
****By Federal Express***

J.G. Harrington
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036
****By First Class Mail***

Catherine Kane Ronis
Wilmer, Cutler & Pickering, LLP
2445 M Street, NW
Washington, DC 20037-1420
****By Federal Express***

Lydia Pulley
600 East Main Street
11th Floor
Richmond, VA 23219
****By Federal Express***

By: Jodie L. Kelley
Jodie L. Kelley

4

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Petition of AT&T Communications of Virginia Inc.,)	
Pursuant to Section 252(e)(5) of the)	CC Docket No. 00-251
Communications Act for Preemption of the)	
Jurisdiction of the Virginia Corporation)	
Commission Regarding Interconnection Disputes)	
With Verizon Virginia Inc.)	

**OPPOSITION OF WORLDCOM, INC. TO VEFUZON'S
APPLICATION FOR REVIEW OF THE WIRELINE COMPETITION BUREAU'S
OCTOBER 8,2002 ORDER APPROVING THE INTERCONNECTION AGREEMENTS**

Lisa B. Smith
Kecia Boney Lewis
Kimberly Wild
WorldCom, Inc.
1 133 19th Street, N.W.
Washington, D.C. 20036

Jodie L. Kelley
Robin M. Menweather
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005

Counsel for WorldCom, Inc.

Dated: December 17, 2002

Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, WorldCom, Inc. ("WorldCom") respectfully submits this Opposition to Verizon's Application for Review of the Wireline Competition Bureau's October 8, 2002 Order Approving the Interconnection Agreements,¹ CC Docket Nos. 00-218, *et al.* (filed Nov. 7, 2002) ("Application for Review"). In that petition, Verizon alleges that the WorldCom-Verizon interconnection agreement violates the Telecommunications Act of 1996 ("the Act") because it contains provisions that implement the rulings that Verizon challenged in its Petition for Reconsideration of the Bureau's July 17, 2002 Order.² *See id.* at 3-5. The Application for Review does not repeat the substantive arguments Verizon presented in its Reconsideration Petition, but instead incorporates and briefly summarizes them.³ *See id.* at 4-5.

For the reasons set forth in WorldCom's Opposition to Verizon's Reconsideration Petition: the Bureau's resolution of the disputed issues was fully consistent with binding law and Commission precedent, and Verizon's challenges to the *Arbitration Order* are uniformly meritless. *See* Opposition Of WorldCom, Inc. To Verizon's Petition For Clarification And Reconsideration Of July 17, 2002 Memorandum Opinion And Order (filed Sept. 10, 2002) (attached hereto as Exhibit **A**). Several of Verizon's claims rely upon new factual assertions, new arguments, and/or new contract language, which cannot be considered at this late stage

¹ *In Re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Rate Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, 02-2576 (rel. Oct. 8, 2002) ("Approval Order").

² *In Re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (rel. July 17, 2002) ("Arbitration Order").

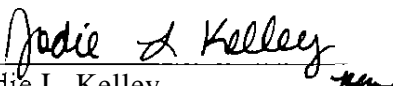
³ Verizon filed its Application for Review as a protective measure, to ensure that it ultimately may obtain Commission review of the issues raised in the pending petitions for reconsideration, and application for review, of the *Arbitration Order*. *See* Application for Review at 2, 4.

⁴ The arguments presented in that pleading are incorporated herein.

without violating Commission rules, the requirements of the Administrative Procedures Act, and principles of due process. *See id.* at 2-6. The remainder of Verizon's assertions are inconsistent with Commission precedent, relevant law, and record evidence. *See id.* at 6-37. Because Verizon's Reconsideration Petition failed to provide any grounds for modifying the *Arbitration Order*, the interconnection agreement provisions implementing that decision are lawful. There is therefore no reason to disturb the **Approval Order**, or to modify the interconnection agreement, and Verizon's Application for Review should be denied.

Respectfully submitted,

Lisa B. Smith
Kecia Boney Lewis
Kimberly Wild
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036



Jodie L. Kelley
Robin M. Menweather
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005

Counsel for WorldCom, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Opposition of WorldCom, Inc. to Verizon's Application for Review of the Wireline Competition Bureau's October 8, 2002 Order Approving the Interconnection Agreements were delivered this 17th day of December, 2002, by email and in the manner indicated below, to:

Karen Zacharia
David Hall
Verizon-Virginia, Inc.
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201
"By Federal Express"

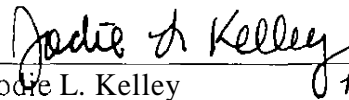
Mark Keffer
AT&T Corporation
3033 Chain Bridge Road
Oakton, VA 22185
****By First Class Mail***

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
****By Federal Express***

J.G. Harrington
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W
Suite 800
Washington, D.C. 20036
****By First Class Mail***

Catherine Kane Ronis
Wilmer, Cutler & Pickering, LLP
2445 M Street, NW
Washington, DC 20037-1420
****By Federal Express***

Lydia Pulley
600 East Main Street
11th Floor
Richmond, VA 23219
****By Federal Express***

By: 
Jodie L. Kelley

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With Verizon Virginia Inc.)

**OPPOSITION OF WORLDCOM, INC. TO
VERIZON'S PETITION FOR CLARIFICATION AND RECONSIDERATION
OF JULY 17, 2002 MEMORANDUM OPINION AND ORDER**

Lisa B. Smith
Kecia Boney Lewis
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Jodie L. Kelley
Robin M. Meriweather
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005

Kimberly Wild
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Counsel for WorldCom, Inc.

Dated: September 10, 2002

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List ARCD E

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INTRODUCTION AND SUMMARY

Pursuant to Section 1.106 of the Commission's **Rules, 47 C.F.R. § 1.106(g)**, WorldCom, Inc. ("WorldCom") respectfully submits this Opposition to Verizon's Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order,¹ CC Docket Nos. **00-218, et al.** (filed Aug. **16, 2002**) ("Pet. for Recon.").

Several principles of law inform the inquiry to be made when assessing Verizon's requests. First, Verizon frequently asserts that **the** decisions rendered **are** inconsistent with the Commission's rules. But the Wireline Competition Bureau (the "Bureau") is uniquely situated to determine what the Commission's current rules mean. Indeed, **well** established principles of administrative law hold that deference to an agency decision is at its zenith when the agency is deciding the scope and meaning of its own rules. *See, e.g., Auer v. Robbins*, **519 U.S. 452, 461** (1997) (noting that agencies are entitled to deference when interpreting own regulations and that such interpretations are controlling unless "plainly erroneous or inconsistent with the regulation"); *Lyng v. Payne*, **476 U.S. 926, 939** (1986) ("[A]n agency's construction of its own regulations is entitled to substantial deference"); *Global Crossing Telecomms., Inc. v. FCC*, **259 F.3d 740, 746** (D.C. Cir. 2001) (courts "must defer to an agency's reading of its own regulations unless that reading is plainly erroneous or inconsistent with the regulations. . . [and] must accord deference to an agency's reasonable interpretation of its own precedents") (internal citations omitted); *Cassell v. FCC*, **154 F.3d 478, 483** (D.C. Cir. **1998**) (describing deference due to agency's interpretation to its OWR precedent).

¹ *In Re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket Nos. **00-218, 00-249, 00-251, DA 02-1731** (rel. July 17, 2002) ("*Arbitration Order*").

Second, a number of Verizon's challenges rest on factual assertions, and arguments that the Arbitrator misunderstands the relevant facts. But the Arbitrator heard the evidence, and is best situated to make factual judgments. It is for this reason that courts reviewing arbitration decisions such as the one at issue here have uniformly held that the factual decisions of the relevant commissions are entitled to great deference, and may only be overturned if the rulings are arbitrary and capricious. *See. e.g., MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3d Cir. 2001); *Southwestern Bell Tel. Co. v. Waller Creek Communications, Inc.*, 221 F.3d 812, 816 (5th Cir. 2000); *GTE South v. Morrison*, 199 F.3d 733, 745-46 (4th Cir. 1999); *AT&T Communications & Virginia, Inc. v. Bell Atlantic-Virginia*, 197 F.3d 663, 668 (4th Cir. 1999); *see also GTE South v. Morrison*, 199 F.3d at 745 (state commission factual findings must be upheld if supported by substantial evidence in the record); *MCI Telecommunications Corp. v. U S West Communications*, 204 F.3d 1262, 1266-67 (9th Cir. 2000) (same).

As explained in further detail in the section addressing Verizon's individual claims, Verizon's petition raises issues that *are* uniformly meritless. Perhaps even more troubling, however, although the record is **closed**, Verizon continues to inject new factual assertions, entirely new arguments and new contract language despite the fact that it is unquestionably improper for it to do *so*. The rules established for this proceeding, the rules of the Commission, the requirements of the Administrative Procedures Act ("APA"), **and the** requirements of due process **all** mandate that **the Commission strike**

any **new** factual assertions, and **decline** to address the new arguments and **contract** language proposed by Verizon.²

The Due Process Clause of the Fifth Amendment of the U.S. Constitution **requires** that **a** party not be deprived of “life, liberty, or property without due process of law.” U.S. Const. amend **V**. In the context of agency decisionmaking, this requires a party to be given an opportunity to respond both to proposals, and evidence submitted **in** support of such proposals. The Administrative Procedures Act imposes similar requirements. Because Verizon has attempted to inject **new** proposals well after the time within which WorldCom can submit evidence and cross-examine **Verizon’s** witnesses, both the **Due** Process Clause and the APA require that such proposals be struck. Indeed, if the Commission were to consider them at this juncture, that decision would constitute reversible error,

Almost seven decades ago, the Supreme Court recognized that “[t]he **right** to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims **of** the opposing party and to meet them.” *Morgan v. United States*, 304 U.S. 1, 18 (1938). The Court reiterated the critical importance of a party’s ability to fairly address relevant claims in *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281 (1974), stating:

A party is entitled, of course, to know the issues **on** which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the **Due** Process Clause forbids **an** agency to use evidence **in** a way that forecloses **an** opportunity to offer a contrary presentation.

² WorldCom notes that Cox Virginia Telecom Inc. has **filed** a “**Motion to Strike the Declaration of William Munsell and Other Inappropriate New Matter.**” WorldCom **is** in complete accord with **the** arguments made by **Cox** **in** that pleading, and adopts **those** arguments **as** if **fully** set **forth** herein.

Id. at 288 n.4; *see also Ralpho v. Bell*, 569 F.2d 607,628 (D.C. Cir. 1977) (“[a]n opportunity to meet and rebut evidence utilized by an administrative agency has long been regarded **as** a primary requisite of due process”).

Similar requirements are imposed by the Administrative Procedures Act. The **APA** provides, *inferalia*, that a “reviewing court shall ... **(2)** hold unlawful and set **aside** agency action, findings, and conclusions found to be - **(A)** arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law... [or] **(E)** unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute.” 5 U.S.C. §§ 706(2)(A), 706(2)(E). Encapsulated within these mandates is a requirement that the facts on which an agency bases its decision are sufficient, and that other parties have had the opportunity to respond to such submissions. *See generally City of New Orleans v. SEC*, 969 F.2d 1163, 1167 (D.C. Cir. 1992); accord *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1159-60 (D.C. Cir. 1987) (“**A** precept fundamental to the administrative process is that a party have an opportunity to refute evidence utilized by the agency in decisionmaking affecting his or her rights.”).

This Commission’s rules create a limited exception *to* these requirements in petitions for reconsideration. A party may raise arguments that rely on new facts in a reconsideration petition *only* if the new factual determinations “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters,” 47 C.F.R. §1.106(b)(2)(i); *see id.* §1.106(c)(1); if they were “unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned by such opportunity,” *id.*

§1.106(b)(2)(ii); *see id.* §1.106(c)(1); or if the party demonstrates that consideration of the new facts is “required by the public interest.” *Id.* § 1.106(c)(2). Verizon’s reconsideration petition does not even purport to meet these stringent requirements, and Verizon **has** failed to articulate any intervening events, changed circumstances, prior lack of knowledge, or public interest concerns that would warrant consideration of the newly minted facts included in its arguments.’ Verizon’s effort to raise new facts thus finds no support in Rule 1.106.

Thus, were the Commission to allow Verizon to introduce new proposals at this late stage, both the Due Process Clause and the **APA** would **be** violated. First, WorldCom has had no reasonable opportunity to address Verizon’s proposals. **All** opportunity to present direct evidence and to cross-examine witnesses has long since passed. Similarly, allowing Verizon to alter its proposals *after* all testimony has been submitted, and *after* the hearings in this matter have concluded would be fundamentally arbitrary and capricious. Indeed, it would render these proceedings largely irrelevant with respect to these new proposals.

In addition to violating due process requirements and being arbitrary and capricious, Verizon’s attempt to inject new proposals at this point also violates the Commission’s procedural order. In that Order, the Commission made clear new evidence could not be introduced even *during the hearing* (much less *after* a decision in the case has been rendered): “No party may introduce an exhibit (including expert reports) or call a witness *unless the exhibit or witness was identified in that party’s pre-hearing submission*, except *for* good cause shown.” *Procedures Established for Arbitration of*

⁷ Verizon does include a conclusory assertion that the Munsell Declaration meets *these* requirements, Pet. for Recon. at 22n.49, but fails to explain how it does so.

Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, 16

F.C.C.R. 3957,3946 (2001) (emphasis added). This makes clear that, at a minimum, the parties' proposals should have come to rest by the time the hearing began.

Accordingly, the Commission should decline to address **any** new proposal or evidence introduced by Verizon at this stage of the proceeding. The remainder of Verizon's requests are inconsistent with Commission precedent, relevant law, and record evidence. Accordingly, all of Verizon's arguments should be rejected,

ARGUMENT

I. **VERIZON'S PROPOSAL TO IMPOSE A DIRECT TANDEM TRUNKING REQUIREMENT AT ALL TANDEMS IN A LATA MUST BE REJECTED (ISSUE I-4).**

Verizon **first asks** the Arbitrator to revise its decision with respect to end office trunking. Verizon's request should be rejected for two, independent reasons. First, although Verizon asserts that it **seeks to** "clarify" its agreement with WorldCom, **in** fact it is an attempt to relitigate an entirely different issue – its GRIPs proposal – that the Arbitrator squarely, and appropriately rejected. If Verizon's request is somehow not deemed merely a rehash of that rejected proposal, it would be a request for an entirely new requirement that was not proposed during the arbitration. For these reasons alone, the Arbitrator must reject Verizon's request. In any event, even if this matter were properly before the Arbitrator, Verizon's request is meritless. In its proposal on *this issue*, WorldCom **voluntarily agreed to** a solution (direct end-office trunking at the **DS-1** threshold) that **goes** beyond the requirements **of existing** law – **as evidenced** by the **fact** that the Arbitrator declined to **impose** this same requirement on either AT&T or Cox. And the Arbitrator chose *Verizon's* proposed language implementing **this** requirement,

reasoning that “Verizon’s proposed language measure[d] the relevant traffic in a manner consistent with WorldCom’s proposed language,” but was more complete. *Arbitration Order* ¶ 90. That language does not contain the requirement that Verizon now proposes. *Id.* ¶ 90. Verizon now seeks to “clarify” its own language by adding additional requirements that WorldCom did not agree to and that the Commission did not impose on any party, including AT&T or Cox. The Commission must reject this request. Verizon has already obtained more than it is entitled to and certainly **enough to** satisfy the requirements of relevant law.

Verizon’s request that the Arbitrator “Clarify That WorldCom’s Agreement To Establish Direct End Office Trunks At The DS-I Threshold Applies Even If WorldCom Establishes Physical Interconnection At A Single Tandem In The LATA,” Pet. for Recon. at 11, is disingenuous, at best. What Verizon **seeks** goes well beyond the establishment of direct end office trunks at the DS-I threshold – a requirement to which WorldCom **has** agreed. Instead, Verizon now asks the Arbitrator to hold that when the single physical point of interconnection WorldCom establishes is at a tandem, WorldCom **will** establish direct trunks to all other tandems located in the same LATA. Far from being a minor “clarification,” Verizon’s proposal is merely **an** attempt to relitigate its failed GRIPs proposal. Indeed, the contract section Verizon **asks** the Arbitrator to “clarify” is that adopted in conjunction with Issue I-1, which is the GRIPs issue, not Issue I-4, which is **the** issue dealing with end office trunking.

As it **has** here, under Issue I-1 Verizon **asked that** competitive LECs **be required** to establish multiple “interconnection points” in each LATA. The competitive carriers objected on the ground that this is squarely prohibited by the FCC’s rules. which

expressly allow competitive carriers to establish a single point of interconnection per LATA. They also explained that this would prevent competitive carriers from establishing **an** efficient network configuration, and would instead require their network to mirror the configuration of Verizon's network. *See. e.g.*, WorldCom Br. at 8-13; WorldCom Reply Br. at **4-5**. The Arbitrator agreed **with** the competitive carriers, and adopted petitioners' proposed contract language, reasoning that it "more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals." *Arbitration Order* ¶ 51.

Although it does not challenge this holding directly, Venzon mounts a collateral attack on the Commission's decision in the guise of a request for a clarification of a different issue – that related to end office trunking (Issue **1-4**). Thus, Verizon **asks** the Arbitrator to "clarify" that, although WorldCom may establish a single point of interconnection per **LATA**, if WorldCom chooses to do so at a Verizon tandem it **must** also "configure its trunk groups to aim trunks **at** each Verizon tandem switch in the LATA. . . ." Pet. for Recon. at 11. Thus, Venzon **seeks** to require WorldCom to interconnect at each and every tandem in a LATA. This is plainly inconsistent with the Commission's ruling with respect to Issue I-1, and with the underlying legal regime that led the Commission to reject Verizon's position with respect to that issue in the first Instance. Accordingly, the Commission should summarily dismiss Verizon's **request**.

If, for **any** reason, the Commission believes this issue was not previously litigated and decided in conjunction with Issue I-1, Verizon's request must be dismissed **as an attempt to inject a new issue** into the proceeding. There is no question **that the** issue Verizon raises **was not** raised at any point during the arbitration with respect **to end-office**

trunking as evidenced by. **among** other things, the briefs filed by the parties and *the* Arbitrator's decision on this issue (all of which utterly fail to discuss this proposal). Nor was it included in contract language related to this issue – indeed the contract language that Verizon complains of is that adopted in paragraph 51 of the *Arbitration Order* – which involves the GRIPs issue. Verizon cannot **now**, in the guise **of** a request for reconsideration, attempt to shoehorn this issue into the end-office trunking language. *See* pp. 3 - 7, *supra*.

In any event, Verizon's proposal **is** utterly flawed on the merits. Because it is economically efficient and rational for it to do *so*, WorldCom **agreed** to establish direct end-office trunking when traffic reaches a DS-I level threshold. The Commission declined to impose this same requirement on other competitive carriers, concluding that Verizon had not met its burden of proof on this issue. *See Arbitration Order* ¶ 89. Given that Verizon has not even shown that direct end-office trunking is required, it plainly has not demonstrated that direct tandem trunking is required.

Indeed, the Arbitrator **rejected** the **only** argument Verizon did **make** regarding purported exhaust problems at tandem switches. Specifically, Verizon attempted to limit WorldCom's ability to connect to tandem switches to **240** trunks. The Arbitrator noted, however, that "Verizon's witness conceded that end office interconnection at the **DS-I** threshold would get Verizon '95 percent of the way' to solving the tandem exhaustion problems in Virginia, rendering the 240 tandem trunk cap superfluous." *Arbitration Order* ¶ 90 (internal citations omitted). The Arbitrator thus declined "to impose **this** restriction on WorldCom for such a marginal and speculative benefit. . . ." *Id.*

The requirement Verizon now **seeks** – that WorldCom connect to each and every tandem switch in a **LATA** if it picks a tandem switch **as** its point of interconnection– is even more unnecessary and superfluous than the rejected 240 *trunk* limit. Verizon's new proposal would require WorldCom to connect to every **tandem**, even if traffic to any given tandem **was de minimis**. **No** record evidence indicates that this is necessary, or even that it would be useful. To the contrary, as WorldCom's witness **Don Grieco** explained, allowing WorldCom to connect to a single tandem frees up ports that would otherwise be used if WorldCom were to connect to multiple tandems. See Tr. 1622-1624. This configuration is also more efficient, because it allows a single *trunk* group to be utilized to carry traffic destined for one tandem that may be busy during the day, for example, while carrying traffic to another tandem that may be busy during the evening. See *id.* at 1624. And, of course, if sufficient traffic were destined to one end office, WorldCom would establish direct trunking to that office, removing such traffic from the tandem altogether.

As the record evidence demonstrates, this very architecture is used in other states, and it works **well**, See, e.g., *id.* at 1624, 1635. That alone demonstrates that it is practical and technically feasible. But WorldCom's witnesses also explained precisely how it works, and why it is the most efficient use of resources. *Id.* at 1621 (explaining that Verizon's tandems are all linked); *id.* at 1622-23 (explaining architecture and the efficiencies that result); *id.* at **1624** (explaining that fewer trunk groups are needed pursuant to this type of architecture); *id.* (explaining this **is used successfully** with other

⁴ Indeed. Verizon itself routes traffic from a single tandem, through other tandems, to any end office which subtends any of the multiple tandems in the arrangement. See Verizon's August 19, 2002 Industry Letter ("Industry Letter") (attached hereto as exhibit A) (available online at <http://128.140.241/east/wholesale/resources/master.htm>).

LECs, and that tandems are capable of routing calls through other tandems to relevant end office); *id.* at **1635** (explaining that connecting with a single tandem eliminates trunking requirements at other tandems in a **LATA**).

Finally, Verizon's assertion that its "clarification" is necessary because the LERG lists no more than two routing points (the end office switch and the single tandem that that end office subtends) for a particular NPA-NXX is wrong. The LERG currently can reflect a variety of routing options. Indeed, the *Industry Letter* provides a concrete example of the way in which a call destined for any of 21 different end offices can be routed through multiple tandems. **That** the LERG does not stand as **an** impediment to establishing a single POI at a tandem is merely confirmed by the fact that, as discussed above, WorldCom employs precisely this architecture in other parts of the country without problem.

For all these reasons, the Commission should reject Verizon's request to dramatically transform WorldCom's agreement to establish direct end-office trunking when traffic reaches a DS-I level into a requirement that WorldCom connect at every tandem in a LATA.

II. THE ARBITRATOR PROPERLY REJECTED VERIZON'S ATTEMPT TO IMPOSE USE RESTRICTIONS ON WORLDCom'S PURCHASE OF DEDICATED TRANSPORT (ISSUE IV-6).

This issue involves the situation in which WorldCom and Verizon jointly "provision . . . switched exchange access services to IXCs. . . ." *Arbitration Order* ¶ 177. The Arbitrator correctly concluded that, in such circumstances, "Verizon should **assess** any charges for its access services upon the relevant **IXC**, not WorldCom." *Id.* No party appears to dispute this conclusion. The Arbitrator also held that **WorldCom has the right**

to purchase dedicated transport from Verizon as an unbundled **network** element to **extend** its facilities to the **POI**, and that Verizon may not place use restrictions on WorldCom's use of such elements. *Id.* This conclusion is not only in accord with, but is mandated by, governing law.

Venzon continues to insist, however, that if WorldCom purchases such an element, it may use it only to provide local service. If WorldCom intends to provision exchange access over such unbundled network elements, Verizon insists that WorldCom should have to pay much higher rates for "access toll connecting **trunks**" **for** such a network element. Verizon's challenges to the Arbitrator's straightforward determinations largely represent a rehash of the argument it previously made, and properly lost.

First, Verizon repeats **its** assertion that WorldCom (the local exchange carrier) purchases Verizon's access services and thus should have to pay access rates for dedicated transport. **See** Pet. for Recon. at 11-13. This **is** wrong. WorldCom, as the local exchange carrier, **provides** access services to interexchange carriers – in this case jointly with Verizon. It never purchases access services. **In** particular, in a meet-point trunking arrangement, WorldCom provides access services to the IXC up to the point of interconnection, and Verizon provides access services from its side of the **POI** to the IXC. **As** the Arbitrator correctly found, Verizon simply does not provide interexchange service to local exchange carriers, such as WorldCom. *See Arbitration Order* ¶ 177.

Given that, there is no question that the Arbitrator's decision was not only reasonable, it **was** the only one consistent with **relevant law**. Incumbent carriers **such as** Verizon **have an** obligation to provide unbundled network elements, including dedicated transport, in order for CLECs to provide **any** telecommunications service. 47 U.S.C.

§ 251(c)(3). The statute itself does not allow the ILEC to restrict the service to telephone exchange service **as** opposed to exchange access service. The Commission **has** strongly affirmed **this** requirement, making clear that ILECs are prohibited from imposing “limitations, restrictions, or requirements on **requests** for, or **the use** of, unbundled network elements that would **impair** the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.” 47 C.F.R. § 51.309(a); *see also Local Competition Order* ¶ 264 (concluding that section 251(c)(3) “does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements” and that “[a] single network element can be used to provide many different services”); *id.*, ¶ 292 (noting that requesting carriers leasing a network from an incumbent may “provide **any** telecommunications services that can be offered by means of the element”) (emphasis added); *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, ¶ 484 (1999) (“*UNE Remand Order*”), *modified*, 15 F.C.C.R. 1760 (1999). These provisions unequivocally prevent Verizon from denying WorldCom the ability to purchase unbundled dedicated transport simply because WorldCom intends **to** use it, in part, to provide exchange access service.⁵

Thus, Verizon’s assertion that meet point facilities “**are** used for a transiting Function not interconnection” is not only incorrect, it is irrelevant. It is wrong because

⁵ Verizon appears to **suggest** that **the** Commission must consider **the “service”** WorldCom **intends to offer** through the **use** of an unbundled network element before it can conclude **that** the element must be provided on an unbundled basis. Although WorldCom disagrees with Verizon’s premise, what is relevant for these **purposes** is that the Commission has concluded that dedicated transport is a network element. Verizon **may** disagree with that analysis, at least in certain applications, but it **may** not collaterally attack that **determination** in this proceeding.

WorldCom is purchasing dedicated transport in order to extend its facilities to the **point** of interconnection. It is irrelevant because, pursuant to ~~the~~ Act and the Commission's rules, incumbent carriers may not restrict a competitive LEC's right to **use** unbundled network elements to provide **any** telecommunications service, no matter what name the LEC assigns to the service. Indeed, in this very proceeding, the Arbitrator expressly concluded that a LEC has the right to **use** unbundled network elements **to exchange transit traffic** with third party carriers. See **Arbitration Order ¶ 121** (affirming the right of CLECs to use UNEs for the provision of any telecommunications service, including transiting traffic to third-party carriers). This finding of law, which is manifestly correct, has not been contested by Verizon. Thus, **Verizon's** attempt to inject the label "transiting" service does not alter the conclusion reached by the Arbitrator in any way.

Finally, this analysis is not altered in any way by section 251(g) of the Act. Although Verizon asserts that 251(g) "exempts exchange access.... and exchange services for such access to interexchange carriers from the requirements of section 251," Pet. for Recon. at 12, that interpretation of section 251(g) has been squarely and repeatedly rejected by the Commission:

We believe [section 251(g)] does not apply to the exchange access services requesting carriers may provide themselves or others after purchasing unbundled elements. Rather, the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.

Local Competition Order ¶ 362

Verizon's half-hearted reference to *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642 (rel.

July 25, 2002) (“*Mounrain Order*”), is even more misguided. That Order has nothing whatsoever to do with whether a local exchange carrier can **use** unbundled network elements to provide certain services. Instead, it involved a CMRS provider which asserted that **no** charges were applicable when a local exchange carrier transported paging traffic to the CMRS provider. The Order also deals with **an** entirely different arrangement than meet point trunking—Mountain’s establishment of **a** wide area calling arrangement by ordering DID numbers and T-1 services out of an access tariff. The Commission ruled that in such circumstances, a *transiting* LEC may enter into a wide area calling arrangement with a CMRS provider in order to reduce end-user charges for CMRS services. Thus, the LEC forbears from charging for toll in exchange for the wide area calling arrangement with the CMRS provider.

Thus, the Commission’s decision in *Mounrain Communications* dealt with the situation where the LEC is a toll provider, and would charge an **end user** toll but for the wide area calling arrangement. Here, the IXC provides toll, or long-distance services. For all such toll calls to or from a WorldCom end user, regardless of the identity of the **IXC**, WorldCom and Verizon jointly provide **access to** that IXC, and the IXC charges the appropriate party the full applicable toll. *Mountain Communications* simply does not apply.

Accordingly, the Commission should once again reject Venzon’s attempt to prevent WorldCom from using unbundled network elements, including dedicated transport, to provide telecommunications services as the **Act** allows.

III. THE ARBITRATOR CORRECTLY DETERMINED THAT NPA-NXX'S SHOULD BE USED TO DETERMINE WHETHER A CALL IS LOCAL OR TOLL (ISSUE I-6).

In the *Arbitration Order*, the Commission declined to alter the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call” to determine “whether a call passing between [the parties’] networks is subject to reciprocal compensation (traditionally referred to as ‘local’) or access charges (traditionally referred to as ‘toll’).” *Arbitration Order* ¶ 286. In reaching its decision, the Commission noted that “Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide,” *id.* ¶ 301; that “[t]he parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete workable solutions at this time,” *id.*; and that, although Verizon proposed the use of a traffic study to develop a factor to account for virtual FX traffic, “Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.” *Id.* ¶ 302 (internal citations omitted). Based on all of this, the Arbitrator concluded that the only sensible approach was to continue the existing practice of using NPA-NXXs to determine whether a call is local or toll. The Arbitrator’s decision was consistent with existing law and, particularly given the evidence before it, is unassailable.

A. Verizon’s Request for Reconsideration Must be Denied Because it Relies on “Evidence” That is Not Part of This Record and Cannot be Considered.

Verizon nonetheless **seeks** reconsideration of the Arbitrator’s decision, relying primarily on a traffic study Verizon conducted in Florida *after* the arbitration ended,

coupled with **an** accompanying declaration purporting to demonstrate how such a **study** could be imported into Virginia and contract language suggested for the first time in Verizon's Petition for Reconsideration. None of this may be considered, however. **As** explained above, the Commission's **rules** prohibit the introduction of new evidence at this stage, unless such evidence was not available and could not have been reasonably ascertained during the proceeding below. See pp. 3-7, *supra*; 47 C.F.R. § 1.106(b)(2). Verizon could have performed a traffic study and introduced it during the Arbitration had it chosen to do so, and similarly could have proffered the contract language it now purports to introduce. It simply failed to meet its burden of proof, and cannot rectify that **now** by submitting further facts in an effort to buttress its position. See pp. 3-7, *supra*.⁶ For that reason alone, the Commission must affirm its prior conclusion.⁷

B. Verizon's "Legal" Arguments Are Meritless.

The balance of Verizon's arguments **are** merely a rehash of arguments previously rejected, or are makeweights. **As** explained below, they are uniformly meritless, and should **be** rejected.

As an initial matter, Verizon **asks** the Arbitrator only "to reconsider its decision to the extent it requires Verizon to pay reciprocal compensation on calls Verizon hands off to Petitioners outside the originating local calling area and that they deliver to customers outside the originating local calling area." Pet. for Recon at 18. In essence, then, Verizon asks the Arbitrator to exempt a category of "local" calls from the requirements of

⁶ As explained above, it would also violate the Administrative Procedures Act and the requirements of due process to reconsider the Arbitrator's decision on the basis of evidence which Verizon failed to introduce during the proceeding below, thus precluding other parties from submitting appropriate evidence and conducting cross-examination in response.

⁷ In any event, Verizon's "new" evidence adds nothing of substance to its arguments. The one-page Declaration sheds no more light on the policy, billing and technical issues associated with Verizon's traffic study proposal than does Verizon's testimony and Brief submitted during the proceedings.

§ 251(b)(5) of the Act. Nothing in the Commission's existing **rules** sanctions such a result. however, and, as the Arbitrator repeatedly made clear, only existing law is relevant to the decisions rendered in this arbitration.

In implementing the Act's requirements, the Commission concluded **that** § 251(b)(5) of the Act requires the payment of reciprocal compensation for "local" calls. *In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. **15499 (1996)**, ¶ **1040** ("**Local Competition Order**"). The Arbitrator correctly concluded that the parties are to rely on originating and terminating central office codes to determine if calls *are* "local". Its corresponding determination that such local calls are subject to reciprocal compensation **is** thus mandated by the Commission's existing rules.

Venzon's attempt to alter the analysis by pointing to § 251(g) of the Act and **47** C.F.R. § 51.710(b)(1) is utterly unavailing. Indeed, § **51.710(b)(1)** *supports* the Arbitrator's decision. That rule makes clear that *access services* are exempted from the reciprocal compensation regime – but access services, by definition, are not provided for "local" traffic. Thus, by its own terms § **51.710(b)(1)** does not provide an exemption for the traffic at **issue** here. And Venzon's reference to § 251(g) of the Act is even more puzzling. In *WorldCom, Inc. v. FCC*, **288 F.3d 429** (D.C. Cir. **2002**), the Court of Appeals for the District of Columbia Circuit squarely rejected the argument that § **251(g)** provides a basis **for** exempting local traffic from the reciprocal requirement obligations of § 251(b)(5). *Id.* at 432-34. Not only does § **251(g)** **apply** only to "**the** 'continued enforcement of certain pre-Act regulatory 'interconnection restrictions and obligations,'" the Court held, it "speaks **only** of services provided 'to interexchange **carriers** and

information service providers'; LECs' services to other LECs . . . **are** not 'to' . . . **an** [XC]." *Id.* at **432.434**. Thus, the D.C. Circuit has squarely foreclosed the argument that § 251(g) justifies the refusal to pay reciprocal compensation for calls handled by two local exchange carriers that, by virtue of the NPA-NXX of the calls, have been deemed "local" by the Commission.

Thus, Verizon's only real claim is that the Arbitrator erred in determining that the originating and terminating NPA-NXX codes should be used to determine whether *a* call is deemed local. Nothing in the record or in existing case law remotely supports Verizon's argument.

Thus, for example, although Verizon asserts that the Commission's decision in *AT&T Corp. v. Bell Atlantic-Pennsylvania* "rejected the **use** of NPA-NXX in place of actual geographic end points of a call" **for** purposes of rating a call **as** local or interexchange, Pet. for Recon. at 20, that characterization of the Order **is** simply wrong. In *AT&T v. Bell Atlantic-Pennsylvania*, the Commission addressed the issue of whether FX service used common lines (such that the LECs' CCL charge was applicable) or private lines (such that the CCL charge **was** not applicable). Although the Order **does** not address the question whether calls to an FX service are jurisdictionally local calls or interexchange calls, it is notable that the LECs in that proceeding "argue[d] that intraLATA FX service is a type of *local* exchange service." *AT&T v. Bell Atlantic-Pennsylvania*, ¶ 76 (emphasis added); *see also id.* ¶ 77 ("The LECs emphasize that intraLATA FX service is a local exchange service.").

Nor did the Commission "rule in that situation, that AT&T **was** required to pay access **charges** for the Richmond end of that call-even though the **call was** locally **rated**

for the caller, because AT&T was still using access service to complete an interLATA call to the called party.” Pet. for Recon. at **21**. The Commission ruled that the *CCL* was applicable because a common line was used to provision the FX service. The Commission simply did *not* find, as Verizon asserts, that **AT&T** was **using** an access service to complete an interLATA call.

Verizon also **asks** for “assurance” that the Bureau has not attempted to tacitly overrule the Commission’s *Mountain Order*, and attempts to equate the issues presented in the *Mounrain Order* with the issues under consideration in this proceeding. That effort, however, is equally unavailing, because, again, the *Mountain Order* expressly addressed different **issues**. Specifically, the *Mounrain Order* made two findings: 1) that Qwest was entitled to charge Mountain for transiting service (Mountain had argued that no charge should be made); and 2) that Qwest was entitled to charge Mountain for a wide area calling arrangement that Mountain had ordered out of a Qwest tariff. *See Mountain Order* ¶¶ 2, 5. The *Mountain Order* does not address the issue of reciprocal compensation although, notably, even Verizon is forced to concede that the traffic addressed in the *Mounrain Order* is subject to a reciprocal compensation obligation.⁸

Verizon’s attempt to equate the wide area calling in Mountain with the FX arrangements at issue in this proceeding fails at a fundamental level. Mountain ordered transport facilities out of Qwest’s tariff **in** order to connect various DID numbers also purchased by Mountain out of an access tariff. The Commission ruled that Mountain must **pay** for the facilities and numbers it ordered. Here, of course, WorldCom is *not* ordering **any** facilities **From** Verizon. Instead, the ILEC simply provides (to its

⁸ *See also Mountain Order*, ¶ 3, n.13, (discussing the finding in the *Texcom Reconsideration Order* that a terminating carrier can charge reciprocal compensation, and include any transiting fee it pays, in the situations discussed therein).

customers) the service it holds itself out as providing as a Local Exchange Carrier, *i.e.*, to deliver the traffic originated by its customers to another carrier. Unlike the situation in *Mountain*, in the FX scenario, WorldCom does not use 'dedicated transport facilities' provided by Verizon. And Verizon does not provide a 'dedicated toll service' to the WorldCom. It delivers its originating traffic to WorldCom, a CLEC, for termination.⁹

Without factual or legal support for a reversal of the Arbitrator's decision, Verizon is forced to regurgitate its previously rejected policy arguments. Specifically, Verizon asserts that CLEC FX traffic forces Verizon to provide transport to a distant calling area for free. As WorldCom explained below, this assertion is wrong. Verizon does not transport the call from the originating calling area to a distant calling area. Whether a call is handled via an FX arrangement or otherwise, Verizon's obligation is to deliver the call to the Point of Interconnection. FX calls impose no special transport obligations or costs on Verizon. If an FX call involves substantial transport to a distant customer location, it is the terminating CLEC which bears the cost of transporting the call (on its network) to the end-users' distant location

C. Verizon's Newly Proposed Suggestion That FX Traffic Delivered To An ISP Should Be Excluded From the Intercarrier Compensation Regime Established In the *ISP Remand Order*" Must be Rejected.

Finally, Verizon seeks "clarification" that the Bureau has not overruled the *ISP Remand Order*. In particular, Verizon asks for assurance that the *Order's* conclusion that

⁹ Verizon misrepresents the Bureau order by claiming that "The Bureau concluded that when a Verizon customer places an interexchange call to one of the Petitioner's customers, and Verizon carries that call to a distant calling area before handing it off to the Petitioner for delivery, Verizon must pay reciprocal compensation on that call." This is Verizon's characterization of the matter, not the Bureau's. The Bureau did not characterize the calls at issue as interexchange calls. In fact, given the Bureau's conclusion that calls must be rated pursuant to the calling and called NPA-NXXs, the Bureau concluded that the calls at issue here are local calls.

¹⁰ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151 (2001).

reciprocal compensation is applicable to FX traffic does not apply to ISP-bound traffic. *See* Pet. for Recon. at 15-16. This is nothing more ~~than a~~ restatement of the conclusion in the **ISP Remand Order**, and no party contends ~~that~~, in the **Order**, the Arbitrator purported to overrule or alter ~~the ISP Remand Order~~.“

Indeed, even a cursory reading of Verizon’s petition makes clear that this request is not truly one for “clarification,” but instead represents yet another attempt to inject another new issue into this proceeding.¹² This new proposal cannot be considered for the reasons set out above. *See* pp. 3-7, *supra*. It is also inconsistent with governing law, and would have to be rejected on the merits **if** it did not have to **first** be rejected because it is procedurally improper.

In the guise of seeking assurance that the **ISP Remand Order** remains in effect, Verizon for the first time suggests that some ISP-bound traffic (specifically that delivered via an FX arrangement) is not entitled to even the intercarrier compensation established in the **ISP Remand Order** itself. *See* Pet. for Recon. at 23. There is absolutely no support in the language **of** the **ISP Remand Order** for this conclusion, nor is there any logic to Verizon’s proposed exclusion of FX traffic to ISPs from the intercarrier compensation regime.

The **ISP Remand Order** sets forth rates to be paid to a local exchange carrier when it terminates traffic to **an** ISP. In that Order, the Commission does not distinguish between traffic delivered to **an** ISP via **an** FX arrangement and traffic delivered to an ISP via some other means. Instead, **pursuant to the ISP Remand Order, all traffic delivered to an ISP is entitled to** the compensation set forth in that **Order**. Verizon’s request that FX

¹¹ WorldCom has sought judicial review of the **ISP Remand Order**.

¹² *See, e.g.*, Pet. for Recon. at 19 n.45; *id.* at 22 n.50.

traffic be excluded from intercarrier compensation is thus flatly inconsistent with governing law. To grant Verizon's request, the Arbitrator would have to alter the terms of the *ISP Remand Order*, creating an exemption in this arbitration proceeding that the Commission did not itself create in the *ISP Remand Order*.” The Arbitrator should firmly decline Verizon's invitation to do so.

IV. THE ARBITRATOR'S CONCLUSION THAT WORLDCOM IS ENTITLED TO THE TANDEM INTERCONNECTION RATE WAS CORRECT.

The Commission's rules provide that new entrants such as WorldCom are entitled to receive the tandem interconnection rate for the cost of transport and termination of traffic routed through a switch that serves a geographic area comparable to the area served by the incumbent carrier's tandem switch. See 47 C.F.R. §51.711(a)(3). In the *Arbitration Decision*, the Arbitrator determined that, pursuant to the Commission's rules, WorldCom could satisfy the geographic comparability test by demonstrating that its switches are capable of serving an area comparable to that served by Verizon's switches. In doing so, the Arbitrator rejected Verizon's assertion that new entrants must prove that they are actually serving a geographically dispersed customer base. Because Verizon conceded that WorldCom's switches met that requirement, the Arbitrator deemed WorldCom's evidence of the capabilities of its switches sufficient to meet the geographic comparability requirement. See *Arbitration Order* ¶ 309. Verizon requests reconsideration of that determination, again asserting that Rule 51.711(a)(3) requires WorldCom to demonstrate that it is actually serving a geographically dispersed customer

¹¹ Verizon's request is not only flatly inconsistent with current law, it is patently illogical. There is absolutely no reason to exclude ISP-bound traffic delivered via an FX arrangement from the intercarrier-compensation regime established in the *ISP Remand Order*. In that Order, the Commission concluded that characteristics unique to calls to ISPs justified a separate compensation regime. That determination did not turn on the physical location of the ISP; it turned on the nature of ISP-bound traffic.

base. Nothing in Verizon's Petition warrants reconsideration of the Bureau's resolution of this issue.

The Act requires local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). In the *Local Competition Order*, the Commission determined that incumbent carriers' reciprocal compensation rates should be adopted as the "presumptive proxy" for the competing carrier's rates, unless the competing carrier establishes that its transport and termination costs are higher than those of the incumbent carrier. *Local Competition Order* ¶ 1098; 47 C.F.R. § 51.711(b). Specifically, "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Local Competition Order* ¶ 1090; see also 47 C.F.R. § 51.711(a)(3) (establishing the same rule).

As the Commission has since reiterated, the geographic Comparability requirement is a rule without exception or qualification. See *Developing a Unified Intercarrier Compensation Regime*, 16 F.C.C.R. 9610 ¶ 105 (2001) ("*Intercarrier Compensation NPRM*") (confirming that the *Local Competition Order* required "only a geographic area test" and that a carrier that shows its switch serves a comparable geographic area is entitled to the tandem interconnection rate); see also *Arbitration Order* ¶ 309 (citing *Intercarrier Compensation NPRM*). Verizon nonetheless attempts to limit the geographic comparability rule by asserting that a competing carrier must demonstrate that it actually serves a geographically dispersed customer base within its serving area.

See Verizon Br. at IC-23 to IC-25; *Pet. For Recon.* at 23-25. Rule 51.711 contains no such requirement, and Verizon's efforts to graft one onto the existing rule must fail.

At the outset, Verizon's proposed geographically-dispersed customer base requirement provides no relevant information, although it may provide insight into the new entrant's marketing and sales success. Conditioning a CLEC's entitlement to the tandem rate upon the success of its marketing efforts to capture ILEC customers, however, has no basis in the Commission's rule and would simply penalize new entrants. *See Arbitration Order* ¶ 309. Indeed, given the substantial investment that a competing carrier must make in its network to be able to serve customers, making a geographically dispersed customer base a prerequisite for obtaining tandem interconnection rates would seriously burden new entrants. *See Rebuttal Test. of D. Grieco and G. Ball* at 51 (WorldCom Exh. 15). Moreover, the geographic area served by a competing carrier's switch is a function of the network utilized by that carrier, not the location of its actual customers; as WorldCom previously explained, "[i]f a CLEC has established network facilities and opened NPA/NXXs that allow end users within rate centers to originate and terminate local exchange service, such rate centers are within the physical or geographic reach of the CLEC's network regardless of the number or location of customers the CLEC has been able to attract." *WorldCom Br.* at 95; *see also Rebuttal Test. of D. Grieco and G. Ball* at 49 (WorldCom Exh. 15).

Second, Verizon's proposal is utterly impractical. Verizon has not proposed, either during the proceeding, or in its Petition for Reconsideration, a specific test for establishing 'a geographically dispersed customer base.' For example, Verizon has not explained how dispersed the customer base must be to satisfy its proposed standard, or

how many customers must reside in a particular geographic area. Indeed Verizon's own witness was unable to explain how the Commission would define and administer the proposed customer base standard. *See* WorldCom Reply Br. at 80-81 (quoting testimony).

Finally, Venzon's assertion that the standard the Commission adopted creates a meaningless distinction between end office and tandem rates because "[a]ny switch is *capable* of serving a very large area [and] it is the loop/transport facility to end **users** that determines geographic reach, not the switch itself," Pet. For Recon. at **25**, ignores the distinctions between the WorldCom and Verizon network architecture. *See* Direct Test. of D. Grieco and *G. Ball* at **75** (WorldCom Exh. 3) (explaining that WorldCom's local network has a substantially different architecture **than** the Verizon network). TLEC networks, developed over many decades, employ **an** architecture characterized by a large number of switches within a hierarchical system, with relatively short copper based subscriber loops. *See id.* By contrast, WorldCom's local network employs optical fiber rings utilizing SONET transmission. *See id.* In general, using this transmission based architecture, WorldCom accesses a much larger geographic area from a single switch than does the ILEC switch in the traditional copper based architecture, and can serve such large geographic areas via its extensive transport network. *See id.* Thus, although Venzon's network architecture may prevent its end office switches from serving a **very** large area, each of WorldCom's Washington-area ~~switches~~ serves an area that is at the very least comparable to if not greater than the service area of any of **the 12 tandem** switches used by Verizon in serving the same Virginia rate centers. *See id.* The tandem rate **rule** reflects this network architecture—switches working in conjunction **with a**

transport network, and Verizon's suggestion that a capability rule is meaningless denies CLECs credit for the capabilities of their loop/transport facilities.

In sum, the Arbitrator should reject Verizon's attempt to impose new limitations on new entrants' ability to obtain tandem rates, and should affirm its decision to administer the geographic comparability test by reference to the new entrants' ability to serve a broad geographic area with their switches.

V. VERIZON'S BELATED REQUEST FOR A "DARK FIBER RESERVATION RATE" SHOULD BE DENIED (ISSUE III-12).

The Arbitrator adopted WorldCom's proposed Attachment III section 5.2.4, see *Arbitration Order* ¶ 461; WorldCom-Verizon Interconnection Agreement, Network Element Attachment § 7.4, which requires Verizon to hold requested dark fiber for WorldCom's use for ten business days from WorldCom's receipt of confirmation of the availability of the fiber. Verizon challenges this provision in its reconsideration petition, asserting that "neither the contract language adopted by the Bureau, nor the Order, addresses Verizon's right to charge CLEC's for their reservation of fiber," **Pet. For Recon. at 30**, and requesting "clarification" of its purported right to impose a non-recurring charge upon competitive carriers for dark fiber reservation. As explained below, Verizon's request should be denied.

First, Verizon's failure to propose during the proceedings and pleadings that it be allowed to charge new entrants for the reservation of dark fiber bars its attempt to obtain "clarification" from the Arbitrator that it may impose such fees. Both AT&T and WorldCom proposed dark fiber reservation language in the early stages of this case, and Verizon therefore had numerous opportunities to address the reservation fee issue it now raises. Instead of responding to the WorldCom and Verizon proposals by requesting the

right to impose a fee for those reservations, however, Venzon simply objected to the imposition of a reservation requirement. *See* Verizon Br. at UNE-58; Tr. at 402-03. Verizon may not cure that omission by raising new arguments after the Arbitrator has issued a decision, and styling it as a request for “clarification.” *See* pp. 3-7, *supra*.

Verizon’s request to supplement the record in the cost phase of the proceedings to include newly-submitted evidence regarding the cost of reserving dark fiber for requesting carriers, and other purportedly new costs associated with meeting the requirements the Arbitrator established in the Arbitration Decision, *see* Pet. for Recon. at 32 n.68, should be denied for similar reasons. *See* pp. 3-7, *supra*. Venzon could have presented evidence regarding any of these items during the cost phase of this case and/or addressed them in its briefs. Indeed AT&T and WorldCom presented cost information on “Intellimux” (a separately stated DCS system) and multiplexing, two of the items for which Verizon now seeks the right to supplement the record. *See* Rebuttal Test. of Baranowski, Murray, Pitts, Riolo, and Turner, at 130-132. AT&T/WCOM Exh. 12P (AT&T/WorldCom Recurring Cost Panel Reb.). Venzon could also have presented cost information on these items in its Surrebuttal Testimony, Recurring Cost Panel (Venzon Exh. 122). The record should not be reopened on Reconsideration to allow Venzon to belatedly submit such evidence. *See* pp. 3-7, *supra*

VI. THERE IS NO BASIS FOR RECONSIDERATION OF THE ARBITRATOR’S DECISION ON SPECTRUM MANAGEMENT (ISSUE IV-14).

The Arbitrator adopted sections 4.2.1.1 and 4.2.11.1 of WorldCom’s proposed Attachment III, *see* WorldCom-Verizon Interconnection Agreement, Network Elements

Attachment §3.21.1, which establish requirements for spectrum management.¹⁴ Verizon failed to address the merits of these provisions, or any of the definitions WorldCom proposed under Issue **IV-14**, in its briefs. It now claims, however, that the spectrum management provisions conflict with the requirements of this Commission's *Line Sharing Order*, and should be removed from the parties' interconnection agreement. *See* Pet. for Recon. at **32-34**. Specifically, Verizon asserts that it should not be required to develop spectrum management procedures, to the extent such procedures are not already in place, because industry-wide standards will be adopted in the future. *See id.* For the reasons set forth below, Verizon's position is both procedurally and substantively defective.

At the outset, Verizon has waived any objections to the disputed provisions by failing to address them in its pleadings and testimony. As WorldCom noted in its reply brief, **Venzon** chose to focus only on the broad principle of referencing "applicable law," instead of discussing the substance of the definitions WorldCom proposed in connection with Issue **IV-14**. *See* WorldCom Reply Br. at **127**; *see also* Verizon Br. at **UNE-70** to **UNE-73**; Verizon Reply Br. at **UNE-40** to **UNE-41**. Venzon had ample opportunity to present its objections to the WorldCom language at that stage of the proceedings, and its attempt to raise challenges to the spectrum management provisions in a post-decision filing must be rejected as untimely. *See* pp. **3-7, supra**.

¹⁴ This Commission has defined spectrum management as "loop plant administration, such as binder group management and other deployment practices that are designed to result in spectrum compatibility, preventing harmful interference between services and technologies that use pairs in the same cable." *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 F.C.C.R. 20912 ¶ 178 (1999) ("Line Sharing Order").

Even if Verizon had presented its arguments before the Arbitrator issued its decision, they would provide no basis for rejecting WorldCom's spectrum management provisions. **As** the Commission has recognized, incumbent carriers' efforts to unilaterally determine whether particular advanced services may be deployed on the network side of the demarcation point, and the pro-incumbent bias and delay inherent in the industry standards-setting bodies' past efforts to adopt spectrum management standards "have undermined the deployment of the technology to provide competitive deployment of xDSL services, contrary to Congress's goals in section 706 of the 1996 Act that the Commission 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'" *Line Sharing Order* ¶ 179. Accordingly, the Commission was obligated to intervene, and set "minimal ground rules" concerning spectrum management. *Id.*

WorldCom's proposed spectrum management provisions memorialize the parties' Obligation to develop spectrum management procedures that comply with appropriate standards. *See* WorldCom Br. at 127. The adopted language establishes a time frame for Verizon to comply with its regulatory obligation to provide its pre-existing spectrum management procedures to WorldCom, **see** 47 C.F.R. § 51.231(a)(1). **In** addition, the language requires Verizon and WorldCom to work together to develop such procedures, to the extent they do not yet exist, within thirty days of WorldCom's written request, and requires the parties to seek expedited resolution by the Commission if they cannot complete the development of these procedures within **six months**. **By** establishing a **timeline** for **the** development of spectrum management procedures, **and** providing a **mechanism** for Commission intervention in the event the **parties cannot reach agreement**,

this provision furthers the Commission's goal of promoting "reasonable and timely" advanced services deployment. *See Line Sharing Order* ¶ 179.

Allowing Verizon to refuse to develop spectrum management procedures until comprehensive industry-wide standards are in place would create the delay that the Commission criticized in the *Line Shoring Order*. Industry standards-setting bodies have historically been slow to develop spectrum management procedures, *see Line Sharing Order* ¶ 179, and it may take a considerable amount of time for them to develop industry-wide spectrum management guidelines; indeed, nearly three years have passed since the issuance of the *Line Shoring Order*, and the process is not yet complete. Accordingly, accepting Verizon's proposal would indefinitely postpone WorldCom's ability to offer advanced services. The Commission's adoption of WorldCom's proposed language was therefore reasonable.

Verizon's assertion that the adoption of the WorldCom language would **usurp** the role of the Network Reliability and Interoperation Council ("NRIC"), *see* Pet. for Recon. at 33-34, is incorrect. **To** be sure, the Commission charged the Network Reliability and Interoperation Council with monitoring the industry-standard-setting bodies' development **of** industry-wide spectrum management rules, and with reporting and submitting recommendations to the Commission on those issues. *See Line Sharing Order* ¶¶ 184-185. However, the NRIC's role is "advisory." *id.* ¶ 184, and nothing in the *Line Sharing Order* suggests that such procedures may not be established through the arbitration of interconnection agreements before more global **standards** are adopted. The adopted language does not force the carriers to duplicate the current **and future efforts of** the NRIC **and the** industry bodies whose work it monitors because **the procedures will**

only govern the Verizon and WorldCom relationship; WorldCom and Verizon need not take into account the nature of other incumbent carriers' and competing carriers' networks and advanced services deployment, and other factors that the industry bodies must consider when adopting nationwide spectrum management policies.

Verizon's suggestion that the adopted language will undermine the development of national spectrum management standards, **see** Verizon Pet. for Reconsideration and Clarification at **34**, is equally meritless. The disputed provision expressly provides that the procedures developed by WorldCom and Verizon "should comply with national standards and Applicable law." WorldCom-Verizon Virginia Interconnection Agreement, Network Elements Attachment §3.2 1.1. Thus the spectrum management procedures will, by definition, comport with the standards that exist at the time the procedures *are* negotiated (or ordered by the Commission). If standards are developed after spectrum management procedures have been negotiated by WorldCom and Verizon, or ordered by the Commission, either party may seek to negotiate to amend the agreement to reflect those standards or, to the extent it has a valid basis for doing *so*, litigate the validity **of** the provision in an enforcement action. Further, if the industry bodies do not produce uniform procedures. and the Commission intervenes to adopt spectrum management procedures recommended by the NRIC, the agreement's change of law provisions would allow the parties to modify the agreement to conform with those new requirements. In sum, requiring Verizon to develop spectrum management procedures *to* the extent that it has not yet done so is reasonable given the current **lack** of industry-wide **standards**, presents **no** likelihood of conflict with national spectrum management standards, **and** furthers the Commission's goal of facilitating the timely deployment of advanced

services. The Arbitrator should therefore deny Verizon's request for reconsideration of this issue.

VII. THE TEN CALENDAR DAY PERIOD FOR SUBMITTING INVOICES IS LAWFUL, BUT WORLDCOM IS WILLING TO ACCEPT VERIZON'S PROPOSED TEN BUSINESS DAY INTERVAL (ISSUE IV-74).

Although Verizon had not previously presented any arguments in opposition to WorldCom's proposal that invoices be delivered to the billed party within ten calendar days of the bill date," *see Arbitration Decision* ¶ 671, it now seeks reconsideration of the Arbitrator's decision to adopt that aspect of the WorldCom billing proposal. Specifically, Verizon claims that it should only be required to submit invoices within ten business days of the bill date, and that granting WorldCom's request would be inconsistent with existing performance metrics and standards in Virginia and the conditions of the *Bell Atlantic/GTE Merger Order*.¹⁶ *See* Pet. for Recon. at 34-36. As discussed briefly below, the ten calendar day billing period does not conflict with the *Merger Order* and performance standard conditions in the manner Verizon asserts. However, in the spirit of cooperation, WorldCom is willing to accept the ten business day interval that Verizon has now proposed.

In doing so, however, WorldCom in no way concedes the validity of any of Verizon's arguments. Indeed, Verizon's assertions are wrong. The *Merger Order* and

¹⁵ WorldCom has consistently included this in its proposed contract language, *see* Direct Test. of Sherry Lichtenberg on Behalf of WorldCom, Inc. at 13-14 (Issue IV-74) (WorldCom Exh. 7); Rebuttal Test. of Sherry Lichtenberg on Behalf of WorldCom, Inc. at 5-6 (Issue IV-74) (WorldCom Exh. 34), and expressly addressed the provision in its brief. *See* Initial Br. of WorldCom, Inc. at 252 (explaining that ten calendar day interval ensures that billed carrier will receive the bill in a timely fashion). These submissions made WorldCom's position clear, and Verizon could have voiced its objections to this proposal in its pleadings. Verizon's suggestion that it had no previous opportunity to address the ten-calendar-day billing interval, *see* Pet. for Recon. at 34-35, is therefore incorrect.

¹⁶ *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 F.C.C.R. 14032 (June 16, 2000) ("*Merger Order*").

the Virginia Performance Metrics Orders cited by Verizon, for **example, do** not prohibit the adoption of a ten calendar day cycle for submitting invoices. Although those Orders evaluate *the* timeliness with which Verizon sends invoices by reference to a ten business day time period, they expressly contemplate that Verizon may make alternate arrangements with a competing local exchange carrier (“LEC”). *See Merger Order*, Attachment A-2a (defining timeliness of bill as “[t]he percent of carrier bills sent to the carrier, unless the CLEC requests special treatment, within ten business days of the bill date.”); *Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Compliance Filing at 104, BI-2 (Va. State Corp. Comm’n Jan. 22, 2002) (same). Requesting a shorter interval during the arbitration of an interconnection agreement is a reasonable means of requesting “special treatment,” and is wholly consistent with these requirements. Indeed, bills submitted in accordance with the ten calendar day interval adopted in the *Arbitration Order* would by definition meet the requirements for measuring Verizon’s adherence to the standards articulated in those orders because that interval is shorter than a ten business day billing period. Neither set of standards purports to define the limits of Verizon’s obligations to provide interconnection and services to new entrants like WorldCom, and the fact that the orders permit any CLEC to request “special treatment” belies Verizon’s suggestion that granting WorldCom a shorter billing interval would be unlawfully discriminatory. The Arbitrator therefore possessed the authority to require Verizon to provide invoices to WorldCom more quickly than those conditions require.

Although there is no legal barrier to the inclusion of WorldCom’s proposed ten calendar day interval, WorldCom would be willing to accept the **ten business day period**

Verizon has proposed. WorldCom notes, however, that Verizon should have raised its concerns in the testimony and briefing, and that a petition for reconsideration is not an appropriate vehicle for raising new arguments in opposition to the WorldCom contract language. Nonetheless, in good faith and a spirit of reasonableness, WorldCom is willing to entertain this single alteration to the recently-filed agreement

VIII. VERIZON'S CHALLENGE TO THE ASSURANCE OF PAYMENT PROVISION SHOULD BE DENIED (ISSUE IV-1 (N)).

The Arbitrator resolved the assurance of payment issue by adopting Verizon's proposed language, with a modification proposed by Verizon itself in a related context. Nonetheless, Verizon faults the Arbitrator's decision, and urges it to eliminate the single restriction imposed by the Arbitrator. Verizon's request should be rejected for two, independent reasons.

First, Verizon asserts that WorldCom's bankruptcy renders the modification imposed by the Arbitrator inappropriate. In fact, however, events occurring in the context of WorldCom's ongoing bankruptcy proceeding effectively negate the imposition of any assurance of payment requirement. As Verizon itself concedes, the question of the "amount and form of payment assurance that WorldCom must provide" is a matter to be decided by the Bankruptcy Court, not a matter to be resolved in the context of an arbitration under section 252 of the Act. See Pet. for Recon. at 38 (conceding that "the Bankruptcy Court will determine, among other things, the amount and form of payment assurance that WorldCom must provide, not this agreement"). The bankruptcy court has now resolved that issue in response to pleadings filed by, among others, WorldCom and Verizon. See *Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies*, August 14,

2002, Case No. 02-13533 (Bankr. S.D.N.Y.). In that Order, the Bankruptcy Court imposed specific requirements on WorldCom, and declined **to** impose others, including requirements proposed by Verizon. That Order may not be collaterally attacked in this proceeding. Thus, WorldCom's pending bankruptcy provides absolutely no basis to alter the assurance of payment provision in the current agreement. Indeed, given that "the Bankruptcy Court [has determined] . . . the amount and form of payment assurance **that** WorldCom must provide," this provision should be deleted from the agreement in its entirety. For this reason alone, at a minimum, Verizon's request must be denied.

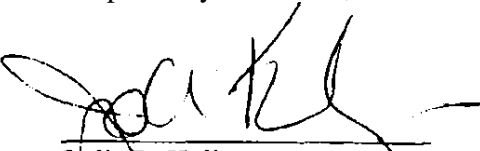
Even if the bankruptcy court's order had not effectively mooted Verizon's request, it would be meritless. As the Commission noted in the Order, Verizon had proposed to exempt WorldCom from this requirement entirely via a "side agreement." *See Arbitration Order* ¶ 728. WorldCom objected on the ground that such side agreements were contrary to the spirit and letter of the 1996 Act. The Arbitrator agreed, deeming it "more appropriate" to address the issue "through contract language." *Id.* In coming up with a particular contract-based solution, the Arbitrator merely adopted the \$100 million net worth threshold that Verizon itself proposed in a related circumstance. *See id.* & n.2395 (*citing* Verizon GTC Brief at 31-32 (offering to permit WorldCom to self-insure if its net worth **surpasses** \$100 million)); *see also* Tr. at 2141-2143 (Antoniou, Verizon) (explaining Verizon's willingness to exempt CLECs whose net worth exceeds \$100 million from insurance requirements). Such a solution was certainly a reasonable attempt to accommodate Verizon's particular concerns without imposing undue burdens on all competitive LECs. Thus, even if the Bankruptcy Court's recently issued Order **had**

not entirely altered the landscape in this area – **and** it plainly **has** – Verizon’s request for reconsideration of this **aspect** of the Arbitrator’s decision would have to be rejected.

CONCLUSION

For the foregoing reasons, the Arbitrator’s decision should be affirmed in all relevant respects.

Respectfully submitted,



Jodie L. Kelley
Robin M. Meriweather
Jenner & Block, LLC
601 13th Street, N.W.
Washington, D.C. 20005

Lisa B. Smith
Kecia Boney Lewis
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Kimberly Wild
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Counsel for WorldCom, Inc.

EXHIBIT A



August 19, 2002

Subject: Veriron Virginia Inc. (Verizon) Adds Voice Telephony over ATY Tandem (VToA) Arrangement at 225 Franklin Rd., SW, Roanoke, VA.

Verizon Virginia Inc. (Verizon) is adding a Voice Telephony over ATM Tandem (VToA) arrangement at 225 Franklin Rd., SW, Roanoke, VA. This project has been initiated to replace the existing tandems in Roanoke, RONKVALK52T, Staunton, STTNVAST03T, and Norton, NRTNVANO02T. Once complete, the new VToA will allow customers a single point of connectivity to access the entire Roanoke LATA.

Three (3) tandem gateways listed below will service this new tandem area. Traffic associated with twenty-one (21) area host end offices in the Roanoke LATA listed below, and their respective remote offices not listed below, will be re-homed to the new VToA tandem arrangement. All CLECs, Wireless carriers, Inter-exchange Carriers (IXCs) and Independent Telephone Companies with service requirements from the re-homed offices will be required to build trunking to any one (1) of these three (3) tandem gateways listed below. This will then allow complete access to all twenty-one (21) end offices subtending the new VToA tandem. The new tandem will have a Masler Common Language Location Identifier (CLLI) code of RONKVALKDC1 and a point code of 246-234-025.

The three tandem gateways to which new trunk groups may be established in this arrangement are as follows:

OFFICE	CLLI Code
Roanoke	RONKVALKGTO
Staunton	STTNVASTGTO
Norton	NRTNVANOGTO

The twenty-one (21) end offices being re-homed to the VToA tandem are as follows:

OFFICE	CLLI Code	OFFICE	CLLI Code
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Bedford	BDFRVABDDS0	Salem	SALMVASADS0
Blacksburg	BLBGVABBDSD0	Stone Mountain	SNMTVASMDS0
Big Stone Gap	BSGPVABGDS0	Stewartsville	SWVLVASVDS0
Christiansburg	CRBGVACBDS0	Lebanon	LBNNVALBDS0
Dublin	DBLNVABUDSD0	Norton	NRTNVANODSD0
Pulaski	PLSKVAPUDSD0	Pennington Gap	PNGPVAPGDS0
Pearisburg	PRBGVAPBDS0	Wise	WISEVAWIDS0
Radford	RDFRVARADSD0	Stuarts Draft	STDRVASDSDSD0
Roanoke-Barkley	RONKVABKDS0	Staunton	STTNVASTDS0
Roanoke-Cave Spring	RONKVACSDSD0	Raphine	RPHNVAXADSD0
Roanoke-Luck Ave.	RONKVALKDS0		

Verizon anticipates being ready to accept ASRs for trunks to the new VToA tandem arrangement (i.e., to one of the three tandem gateways listed above) on or about February 14, 2003. All ASRs for this new tandem arrangement must carry a project code of RONKVALKAO. Originating and terminating Intra-LATA traffic (CLEC, Wireless, Independent), as well as originating and terminating Inter-LATA traffic for these twenty-one (21) end offices and their remotes, will be sewed by the new VToA tandem arrangement immediately upon the completion of these newly established trunk groups. Verizon will work with each carrier to develop a schedule and to provide notification to each carrier prior to re-homing traffic. Until a re-homing plan is developed, carriers will continue to be sewed from the existing tandems, RONKVALK52T, STTNVAST03T, and NRTNVANO02T. With the many carriers involved, it will be critical that all carriers submit ASRs and translation questionnaires, and that they are prepared to turn up their trunk groups as required.

The tandem gateway CLLI Code where you wish to connect must be identified in the SECLOC field on all ASRs for the new VToA tandem. These orders will be processed on a first come, first served basis. Specific trunk testing dates will be individually negotiated as orders are received and reviewed.

Once re-homing is completed, carriers should promptly send disconnect ASRs to Verizon for those existing trunk groups to the RONKVALK52T, STTNVAST03T, and NRTNVANO02T tandems.

As a reminder, LERG updates for any routing records that are affected by this activity should be made as necessary using the normal channels. Pertinent updates to the tandem's deployment plan will be provided through an Industry Letter as needed. If you have any questions about this deployment, please contact your Verizon account manager.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Opposition Of Worldcom, Inc To Venzon's Petition For Clarification And Reconsideration Of July 17,2002 Memorandum Opinion And Order were delivered this 10th day of September, 2002, by email and in the manner indicated below, to:

Karen Zacharia
David Hall
Venzon-Virginia, Inc.
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201
**By Federal Express*

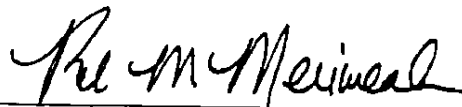
Mark Keffer
AT&T Corporation
3033 Chain Bridge Road
Oakton, VA 22185
**By First Class Mail*

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
**By Federal Express*

J.G. Harrington
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036
**By First Class Mail*

Catherine Kane Ronis
Wilmer, Cutler & Pickering, LLP
2445 M Street, NW
Washington, DC 20037-1420
**By Federal Express*

Lydia Pulley
600 East Main Street
11th Floor
Richmond, VA 23219
**By Federal Express*

By: 
Robin M. Menweather